

Provisional Ballots for a Judicial Election in Texas

Texas Democratic Party v. Bettencourt
(*Gray H. Miller, S.D. Tex. 4:08-cv-3332*)

Six days after the 2008 general election, the Democratic candidate for a state judgeship was a few hundred votes behind his opponent, and several thousand provisional and absentee ballots remained to be verified.¹ The Democratic candidate and the Democratic Party filed a federal action in the Southern District of Texas against the Harris County Tax Assessor-Collector and Voter Registrar to compel resolution of the unresolved ballots.² On the following day, the plaintiffs filed a motion for immediate and permanent injunctive relief.³

Judge Gray H. Miller heard the plaintiffs' motion on November 12, the case's third day,⁴ and Judge Miller denied the plaintiffs immediate relief.⁵ On November 14, the *Houston Chronicle* reported that the counting of additional votes reduced but did not erase the Republican candidate's lead.⁶

An amended complaint filed on December 1 added four Harris County voters as plaintiffs and challenged the validity of the county's procedures for voter registration and provisional ballots.⁷ Judge Miller issued a conditional dismissal of the action as settled on November 2, 2009.⁸ On September 2, 2010, the plaintiffs filed a new complaint with a motion to enforce the settlement agreement.⁹ By April 2, 2012, the matter had settled.¹⁰

The Democratic candidate's efforts in state court to overturn the election results were unsuccessful.¹¹

1. See Alan Bernstein, *Dems Sue Registrar Over Votes for Judges*, Hous. Chron., Nov. 12, 2008, at B1; *County-by-County Results*, Hous. Chron., Nov. 6, 2008, at B6 (547,091 to 547,442).

2. [Complaint](#), *Tex. Democratic Party v. Bettencourt*, No. 4:08-cv-3332 (S.D. Tex. Nov. 10, 2008), D.E. 1.

3. [Motion](#), *id.* (Nov. 11, 2008), D.E. 3.

4. [Docket Sheet](#), *id.* (Nov. 10, 2008) (D.E. 4).

5. *Id.*

6. Alan Bernstein, *Special Ballots Change Nothing*, Hous. Chron., Nov. 14, 2008, at B1.

7. [Amended Complaint](#), *Tex. Democratic Party*, No. 4:08-cv-3332 (S.D. Tex. Dec. 1, 2008), D.E. 10.

8. [Order](#), *id.* (Nov. 2, 2009), D.E. 57.

9. [Petition](#), *id.* (Sept. 2, 2010), D.E. 59.

10. [Docket Sheet](#), *supra* note 4.

11. See Alan Bernstein, *Defeated Candidate Eyes Ballot Glitches*, Hous. Chron., Jan. 9, 2009, at B1; Alan Bernstein, *Democrat Contests 230-Vote Loss for Judge Seat*, Hous., Chron., Dec. 12, 2008, at B4; Brian Rogers, *Candidate Will Not Appeal Ruling to Dismiss Election Suit*, Hous. Chron., July 1, 2009, at B2.